

Earth Removal and Filling Bylaw

SECTION 1 - PURPOSE

In order to protect the health and safety and general welfare of the residents of the Town of Oxford, the following bylaw details the permitting requirements of Earth Excavation and Filling. The purpose of this bylaw is:

- To leave land in a safe and convenient condition for appropriate reuse without requiring excessive and unreasonable maintenance or resulting in damage to public and private property;
- To ensure that earth removal or filling activities shall be conducted in a safe manner with due regard to safety and with minimal detrimental effect upon the area in which the activities are located; and
- To ensure protection of natural resources.
 - 1) Maintaining an adequate supply and quality of surface and underground water.
 - 2) Preventing the contamination of air, water and soils.
 - 3) Facilitating hydrological stability and control of flooding and erosion.
 - 4) Promoting wildlife habitat protection.

SECTION 2 - DEFINITIONS

Abutter: The owner of land abutting a lot including land on the opposite side of an abutting way.

Earth: All forms of soil, including but not limited to clay, gravel, hard pan, loam, minerals, peat, rock, sand, or stone.

Excavation: The extraction of Earth materials by means of digging, blasting, quarrying, or other similar means.

Filling: The placing of Earth to level, raise, or alter by the increase of material an area of ground.

Land Disturbance: Stripping, digging, excavating, blasting, or removing earth off site.

Lot: A single parcel of land lying in a single body and separated from the owner's or other party's contiguous land by property lines described in a recorded plan or deed.

Owner: The owner of a lot with respect to which earth is sought to be removed or filled, or the person lawfully standing in the stead of such owner, such as a lessee, tenant, person, or corporations with written authorization for such removal from the owner.

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Restoration: After an earth removal or filling activity or land disturbance activity is completed, returning the land contours to safe and usable condition, restoring drainage patterns and planting appropriate vegetation.

SECTION 3 - PERMIT GRANTING AUTHORITY

The Planning Board (herein "Board") shall be the permit granting authority.

SECTION 4 - APPLICATION PROCESS

Application for such a permit shall be made by the owner of the property or his authorized agent. Such application shall be accompanied by a map prepared with an accuracy meeting or exceeding standards for a Topographic Survey and Certified Plot Plan. The map shall be clearly and legibly drawn and shall be submitted on good quality mylar or on other material that would be suitable for filing in the land records on sheets having a size no larger than 24 x 36 inches. The map shall preferably be drawn to a scale of one inch equals forty (40) feet but in no case smaller than 1 inch equals two hundred (200) feet. The map and the plan, shall show the following:

- 1) Location of the premises, names of abutting owners, property lines, relations to roadway systems, wooded areas, outcrops, existing rivers, streams, watercourses, pond, swamps, and wetlands on or within two hundred (200) feet of the site.
- 2) An operations statement that includes an estimate of the number of cubic yards of material to be brought to the site, cubic yards of material to be excavated, processed (including materials not originating at the site), or removed – including the rate of removal, which ~~shall~~ may be done in phases, appropriate to the site and scope of the proposed operations, and estimated time length for the operation including necessary sedimentation and erosion control measures in accordance with the Commonwealth of Massachusetts guidelines for Soil Erosion and Sedimentation Control as amended.
- 3) Location of stockpiled material.
- 4) Grading plan showing existing contours in the area to be filled or excavated and proposed contours for the area after operations. Such plans shall include the area to be filled as well as the surrounding area within two-hundred (200) feet of the project area and shall be drawn at a scale of not less than forty (40) feet to the inch and with contours shown at intervals of not less than two (2) feet.
- 5) Existing and proposed drainage of the site (temporary and permanent). Such evaluation shall be based on the recommendation of the Town Engineer and may entail the analysis for a two (2), five (5), ten (10), twenty-five (25), fifty (50), and/or a one-hundred (100) year storm.
- 6) Delineation of the one-hundred (100) year flood plain (if applicable).
- 7) The location and type of any building or fixed machinery to be used.
- 8) Details of final grading and planting of the site to prevent erosion of the site at the conclusion of operations made in accordance with the Commonwealth of

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Massachusetts ~~Guidelines for Soil~~ Erosion and Sedimentation Control Guidelines for Urban and Suburban Areas as amended.

- 9) An estimate of the number and types of trucks and other machinery to be used on the site, including: the location and size of refueling pads, and maintenance locations for machinery and vehicles. Proposed truck access and including number of daily trips.
- 10) Credible evidence of the presence of an endangered or threatened species or other natural resources, and/or archeological or historically significant features may require study by appropriate consultants. The results of these studies shall be considered in the approval process and the Planning Board may stipulate protective measures.
- 11) Details, to the satisfaction of the Planning Board as to how noise will be held to the site and not reach an unacceptable level to neighboring properties, see 310 CMR 7.10. The Planning Board may require noise readings at the boundary lines of the real estate under consideration; This provision does not apply to blasting, see 527 CMR 1.00.
- 12) Proposed use and storage of explosives (earth excavation only). Application should detail the extent of such usage (amount, times to be used, places, circumstances etc.), location of temporary and permanent storage of explosives, and copies of all applicable State and/or Federal licenses/permits.
- 13) Proposed fencing, signage and gates.
- 14) Geological soundings and/or borings to determine level and drainage patterns of underlying bedrock (earth excavation only).
- 15) A statement and supporting documentation regarding potential impact, if any, of any change in surface or groundwater levels or water quality that may be caused by the proposed activities including impacts on private wells and wetlands habitats.
- 16) Other information the Planning Board deems necessary.

Specific requirements may be waived by the Planning Board when in its opinion such requirement is unnecessary because of the limited size of the operation, or other valid reason whereby the health, safety and public welfare will not be adversely affected.

SECTION 5 - REGULATIONS

The Board may adopt, and periodically amend, rules and regulations relating to the terms, conditions, enforcement, surety, fees (including application, inspection, and consulting fees), procedures and administration of this Earth Removal or Filling Bylaw by majority vote after conducting a public hearing to receive public comment. Such hearing dates shall be advertised in a newspaper of general local circulation, at least fourteen (14) days prior to the hearing date. After public notice and public hearing, the Board may promulgate rules and regulations to effectuate the purposes of this Bylaw. Failure of the Board to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this Bylaw.

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SECTION 6 - MINOR OR MAJOR PERMIT DETERMINATION

Activities requiring a permit under this Bylaw shall be categorized as “Minor” or “Major” in accordance with the provisions below.

A. Minor Earth Removal or Filling Permit

- (1) Earth removal, filling, or land disturbance in a residential zoning district greater than 500 cubic yards but less than 1,000 cubic yards per aggregated site development area.
- (2) Earth removal or filling in all non-residential zoning districts greater than 500 cubic but less than 2,000 cubic yards per aggregated site development area.

B. Major Earth Removal or Filling Permit

- (1) Earth removal, filling, or land disturbance in a residential zoning district of 1,000 cubic yards or more on any individual lot.
- (2) Earth removal or filling in all non-residential zoning districts of 2,000 cubic yards or more per aggregated site area.

C. Determination of Applicability and Public Hearing

Applicants for any Earth Removal or Filling Permit shall indicate to the Board whether their project shall be reviewed as a Minor or Major project as part of the application submittal as described above. The Board shall confirm or refute the applicant’s claim in writing with a Letter of Determination within thirty (30) days of receiving an application. Such confirmation shall not restrict the Board from later remanding the plan to a different status if revised information is presented during the review process indicating that the status should be changed.

If an application is determined to require a Minor Earth Removal or Filling Permit, the Board shall inform the applicant of whether a public hearing procedure shall be required.

In determining whether a public hearing is required, the Board shall consider the nature of the Minor project activity and at a minimum, the following factors:

- (1) Potential noise or infrastructure impacts to the surrounding neighborhood
- (2) Proximity of the proposed activity to property boundaries
- (3) Duration of proposed activity

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If an application is determined to require a Major Earth Removal or Filling Permit, a public hearing shall be required.

SECTION 7 - EXEMPTIONS

The following earth removal, filling, and land disturbance activities are exempt from an Earth Removal and Filling Permit only. Additional permits may be required by other Boards, Commissions, or Agencies.

- 1) Earth removal, filling, or land disturbance performed in by any municipal, state, or federal agency.
- 2) Earth removal, filling, or land disturbance operations which are customarily incidental to farming, agricultural, gardening or nursery operations.
- 3) Earth removal, filling, or land disturbance of less than five hundred (500) cubic yards of earth from a lot for the purpose of constructing a building, garage, pool, or other structure and associated facilities on such lot in accordance with a building permit.
- 4) Earth removal, filling, or land disturbance of less than five hundred (500) cubic yards of earth from a lot for the purpose of constructing or improving a private way on such lot.
- 5) Earth removal, filling, or land disturbance of not more than a total of five hundred (500) cubic yards of earth from a lot for any purpose other than constructing a building or other structure and associated facilities on such lot in accordance with a building permit. All amounts of earth removal or filling from a lot within any period of ten (10) consecutive years shall be added together in the computation of such total.

SECTION 8 - WAIVERS

The Board may waiver any of the requirements of this bylaw by a majority vote with the following exception: public hearings for Major Earth Removal or Filling applications.

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SECTION 9 - TIME PERIOD

No permit shall be issued for a period of more than two (2) years. The duration of the permit including the beginning and terminating dates shall be set forth in the permit.

The Board may grant extensions of not more than two (2) years of a Major Earth Removal and Filling Permit; if requested no later than ninety (90) days prior to expiration of the permit without a public hearing provided that the Board has given notice by mail to all abutters, as they appear on the most recent tax list, and no written notice of objection by any abutter to such an extension of time has been filed with the Town Clerk within twenty-one (21) days of the giving of the notice. A new plan and current as-built showing amount of material removed or deposited to date shall be required in order to approve an extension.

SECTION 10 - SURETY

Prior to the issuance of a permit by the Planning Board, the applicant shall post a performance bond with the Town in an amount and form and with surety and conditions satisfactory to the Planning Board and to Town Counsel, with the following exception:

Performance bonds in an amount of five thousand dollars (\$5,000) or less do not require review and approval by Town Counsel and may, at the discretion of the Town Planner, be posted at the time that an application for a zoning permit for the work to be covered by the bond is submitted.

a) The performance bond shall secure ~~the~~ to the Town of Oxford the actual construction, installation, and completion of each approved phase of permitted activities in accordance with these Regulations including without limitation soil erosion and sedimentation control, streets, private streets, drainage, inspection and monitoring fees, and any specific requirements of any conditions of approval by the Board. If the activities at any one particular site are such that will take an extended period of time, the performance bond, at the discretion of the Board, may be submitted in phases over certain time periods. Said performance bond shall be reviewed at each renewal period to determination.

b) The applicant shall submit cost calculations for all permitted activities to be covered by the bond, which will be reviewed by the Land Management Office and the Town Engineer and adjusted to include contingency and inflation factors; monitoring and inspection fee costs, calculated as 5% of the total calculated costs of activities; and revised cost figures as necessary. The bond will cover a period of two years and may be renewed until completion of all approved activities or the expiration of any approvals issued by the Board.

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c) Performance Bonds shall be in the following:

1) A certified check payable only to the Town of Oxford, a certificate of deposit, a money market account, or a passbook savings account, which account shall be federally insured. The names of the applicant and the Town of Oxford shall be on the account and a signed withdrawal slip shall be provided.

d) The applicant may apply for a partial release of the performance bond. After submittal of an ~~A-2~~ as-built survey of the completed permitted activities and inspection by the Board, and/or its authorized agent(s), the Board may, release up to an amount equal to the costs of the completed permitted activities, but no more than 90% of the original bond.

e) If for any reason the performance bond is insufficient to pay for all costs of activities covered by the bond, and the applicant and/or property owner do not complete such activities to the satisfaction of the Board, the applicant and/or property owner shall remain liable for the costs in excess of the performance bonds.

f) The performance bond shall be released in its entirety after:

- 1) The permitted activities covered by the bond have been completed to the satisfaction of the Board; and
- 2) As-built plans and survey, sealed by a registered land surveyor licensed to practice in the Commonwealth of Massachusetts, have been filed with the Land Management Office.

SECTION 11 - PENALTIES

The penalty for the violation of the Bylaw or for earth removal or filling activities without a permit hereunder, except as herein before provided shall be as follows:

- First Offense \$100
- Second Offense \$200
- Each Subsequent Offense: \$300

For each ten (10) cubic yards of earth removed from or deposited to the site in a manner that constitutes a penalty shall be considered a separate offense under this Bylaw.

If a project has begun without a permit, the Town's Building Commissioner or Town Engineer shall, at the property owner's expense, determine the number of cubic yards removed without a permit to assess the number of offenses. Such penalties shall be in addition to the existing rights of the Town to enforce its Bylaws.

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SECTION 12 - ENFORCEMENT

The Building Commissioner, Town Engineer, or the Planning Board's designee may take any or all the enforcement actions prescribed to ensure compliance with this Bylaw, or when immediate danger exists to the public or adjacent property, as determined by the Town. Surety may be used by the Town in carrying out any necessary compliance or restoration work or enforcement actions.

The Town's Building Commissioner or Town Engineer may post the site with a Stop Work Order directing that all earth removal or filling activities not authorized under the Bylaw cease immediately. The issuance of a Stop Work Order may include remediation or other requirements which must be met before activities may resume.

The Board may, after written notice is provided to the applicant, or after the site has been posted with a Stop Work Order, suspend, or revoke the Earth Removal or Filling Permit issued by the Town. No person shall continue earth removal or filling activities in an area covered by a Stop Work Order, or during the suspension or revocation of an Earth Removal or Filling Permit, except work required to correct an imminent safety hazard as prescribed by the Town.

SECTION 13 - ADDITIONAL APPROVALS NECESSARY TO OBTAIN A EARTH REMOVAL OR FILLING PERMIT

Prior to applying for any Earth Removal or Filling Permit, the applicant must have obtained a building permit that necessitates earth removal or filling (Minor Earth Removal or Filling Permit only), and ~~for where necessary~~ an Order of Conditions by the Conservation Commission ~~(where necessary)~~.

SECTION 14 - EXISTING EARTH REMOVAL OR FILLING PERMITS

Earth removal or filling permits in effect at the time of the adoption of this bylaw shall remain in effect until expired. Any new application or extension request shall be consistent with the requirements set forth in this bylaw.

SECTION 15 - SIX MONTH MORATORIUM

No earth removal or filling permit shall be issued for a period of six (6) months from the effective date of this bylaw. This moratorium shall terminate immediately if the Board adopts Rules and Regulations prior to the six (6) month moratorium. The moratorium shall not be extended beyond the six month period without approval at Town Meeting.

This moratorium shall not apply to active permits in effect at the time of approval by Town Meeting. The Board shall consider applications for extension requests

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from applicants with active permits during this moratorium. The previously adopted Rules and Regulations shall apply.

The purpose of this moratorium is to allow the Board to promulgate Rules and Regulations for the following reasons:

- To ensure all earth removal or filling activities are conducted in a safe manner with due regard to safety and with minimal detrimental effect upon the area in which the activities are located.
- To leave land in a safe ~~and convenient~~ condition for appropriate reuse without requiring excessive and unreasonable maintenance or resulting in damage to public and private property.
- To ensure protection of natural resources.

SECTION 16 - PERFORMANCE STANDARDS AND DETERMINATION

- 1) The following performance standards shall apply to Minor and Major Earth Removal or Filling Permits as specified below and as they are applicable to the earth removal or filling operation. The Board shall use these performance standards as the basis for any determination to approve, approve with conditions, or deny a permit application.
- 2) Approval of an Earth Excavation and Filling Permit shall not preclude obtaining any additional permits by any Board, Commission, or Agency.
- 3) The Board may summarily condition a permit approval to meet these standards by referencing this section of the Bylaw. The Board may also modify any of the following performance criteria as part of a conditional approval to ensure that operations will not be injurious, dangerous, obnoxious, or offensive to people in the general vicinity by reason of the emission of odor, fumes, dust, smoke, vibration, noise, heat, glare, or other nuisances observable at the lot lines or the immediate neighborhood.

~~A.~~ Minimum Performance Standards for All Earth removal or filling Permits

- 1) The hours of operation shall be between 7:00 A.M. and 7:00 P.M., Monday through Friday, and 8:00 A.M. until 2:00 P.M. Saturdays. No work shall take place during holidays and Sundays. The warm-up of vehicles, use of equipment, repairs, and loading/unloading of vehicles and trailers on the prescribed site shall only occur within the operation hours.

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- 2) The location of crushing operations shall be dependent on a noise study performed by a qualified firm at the cost of the applicant.
- 3) The operation shall not result in sharp declivities, pits or depressions or soil erosion, drainage or sewerage problems or conditions which would impair the reasonable reuse and development of the lot for purposes permitted under the Bylaws in the zoning district where the site is located.
- 4) All loaded vehicles shall be suitably covered to prevent dust and contents from spilling and blowing from the vehicle off site.
- 5) The operation shall not cause undue injury or damage to public roadway surfaces.
- 6) The permit holder shall be responsible for necessary cleaning of spillage of materials on all roadways because of operations.
- 7) For any depth of excavation, the grade of slope restoration ~~along abutting properties~~ shall be determined by the Board.
- 8) No land shall be excavated to cause accumulation of free-standing water unless free standing water is integral to the postconstruction purpose of the activity and acceptable to the Board.
- 9) Permanent drainage and siltation control shall be provided. Drainage shall not lead directly into any water resource.
- 10) No excavation or associated activities shall be allowed closer than one hundred (100) feet to any ~~water wetland~~ resource within the jurisdiction of the Conservation Commission.
- 11) No excavation or associated activities shall be allowed closer than one hundred (100) feet of an abutting property line without written permission from the abutter(s) unless the Board deems a greater distance to be maintained due to site conditions.
- 12) Excavation or associated activities within twenty-five (25) feet of an abutting way may require, within the discretion of the Board, written permission from the abutter(s).
- 13) Minimum separation distance between any excavation and the seasonal high groundwater table shall not be less than six (6) feet, unless it can be demonstrated to the Planning Board's satisfaction that a smaller separation

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distance will not adversely impact groundwater and/or neighboring uses or future uses on the site. No excavation or fill shall be made that would reduce the final elevation below flood plain, change the area of the flood plain, or expose groundwater without being first permitted by the Conservation ~~Board~~Commission.

- 14) All debris, stumps and boulders shall be disposed of at a facility specifically designed to perform this type of disposal unless reused on-site as part of future operations in a manner acceptable to the Board.
- 15) The perimeter of the job site shall be secured.
- 16) Dust control measures shall be taken to mitigate dust pollution off-site.
- 17) Rodent control measures shall be in place during the entire duration of earth removal or filling activities.
- 18) No building except a field office or temporary shelter for machinery shall be erected on the premises; all proposed buildings shall require a building permit.
- 19) Groundwater quality monitoring wells may be required by the Planning Board as a means of protecting water quality.
- 20) Implementation of an erosion and sediment control plan:
 - 1) Following a filling operation there shall be layer of growing medium of not less than six (6) inches in depth. The area is to be seeded with a suitable ground cover and maintained until the area is stabilized; the Planning Board, or its authorized representative, may require a bond until said area is stabilized. The depth of the growing medium required may be increased at the discretion of the Planning Board based on the ultimate use of the property. The area is to be limed and fertilized as appropriate. Seeding is to be done between April 15 and June 15 or between August 15 and October 15.
 - (a) In all cases, material used for filling shall be limited to suitable earth material for construction as approved by the Planning Board. Use of trash, garbage, or other junk material is expressly prohibited. Burial of stumps is not permitted under any circumstances.
 - 2) The area disturbed by the excavation is to be restored by the installation of a growing medium at depths not greater than those found at the site in its original state –to a maximum of twenty-four (24) inches, and

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not less than six (6) inches – dependent on the ultimate use of the property. Restoration shall be a continuous operation. The following shall govern all restoration.

(a) A layer of growing medium shall be used at a minimum depth of six (6) inches over the excavated area. The depth of growing medium required may be increased at the discretion of the Planning Board based on the ultimate use of the property. The areas for the storage of soil shall be shown on the plans approved by the Planning Board. All stockpiled soil shall be seeded with appropriate perennial grasses and surrounded by appropriate erosion controls.

(b) Following the re-spreading of soil, the area is to be seeded with a suitable ground cover and maintained until the area is stabilized. The area is to be limed and fertilized as appropriate. Seeding is to be done between April 15 and June 15 or between August 15 and October 15.

3) Following the re-spreading of soil and in addition to the seeding requirements of Subsection 1 and 2 above, the Planning Board may require the planting of deciduous and non-deciduous trees (which may be root stock at the time of such planting) at a density appropriate for the site and its intended usage. To the extent practical, the trees shall be hardy native species and compatible with the post excavation site characteristics

21) If blasting is proposed as part of a permit application, a plan for such activity shall be prepared and submitted to the Town Fire Department for review. Such plan shall include provision for monitoring weather conditions for production blasts, including when air shock is likely to be at a minimum and to avoid blasting on days during times of unstable air masses and temperature inversions when air shock is more likely to occur. Additionally, the following Blasting Notice, Monitoring, and Damage Complaint requirements shall be in force.

1) Permittee shall provide the Land Management Office with notification at least twenty-four (24) hours prior to any anticipated production blast and shall notify other individuals requesting such notification of a production blast.

2) All production and test blasts shall be monitored with air pressure, seismic, and decibel meters at no fewer than five (5) sites for each blast.

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- 3) Permittee shall notify, in writing, any property owner who could reasonable be affected by the blasting.
- 4) Permittee shall provide, prior to any blasting, certificates of insurance written by sureties or insurers licensed in the Commonwealth of Massachusetts. The policies required shall be acceptable to the Town of Oxford. If, at any time, any of the insurance policies shall be or become unsatisfactory to the Town of Oxford in form or substance, or if the surety or insurer issuing any such policies is unsatisfactory to the Town of Oxford, the Permittee shall promptly obtain a new policy and submit a certificate of insurance to the Town of Oxford for approval. The Permittee and its insurers shall waive all rights of subrogation against the Town of Oxford and their respective agents and employees for losses arising from work performed under the permit. If any policy is a Claims Made Policy, then following the expiration or termination of this contract the contractor will continue such insurance coverage for a period of at least three (3) years or purchase a tail policy that is reasonably satisfactory to the Town of Oxford.

22) Emergency contact information shall be provided to the Town.

23) All earth materials brought into a site for any purpose including but not limited to soil amendments, topsoil, loam, slope dressing, etc. shall be certified by the applicant through Licensed Site Professional(s) to be clean materials free of contamination. Testing of fill materials shall be conducted monthly. Lading slips stating where material came from and in what quantity along with testing results shall be provided to the town upon request. Topsoil and/or loam shall be screened for invasive species. Any contamination or invasive species shall be disposed of in accordance with federal, state, and local codes.

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24) If contaminated soils are found on the site or on material brough into the site, a Licensed Site Professional shall be employed to address the contamination per 310 CMR 40.0000 and M.G.L Chapter 21E.

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A- Additional Performance Standards for Major Earth Removal or Filling Permits

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- 1) Access roads shall be constructed in a manner that precludes any vehicle from turning more than 90 degrees to enter or leave the site.

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- 2) All access roads shall be properly secured during the nonoperational hours.
- 3) All access roads leading to the public ways shall be paved in a manner suitable to the intended vehicle load for two hundred (200) feet back from said public ways unless such surfacing will impact adjacent resource areas or essential elements of on-site operations.
- 4) On-site refueling of equipment shall be performed only on access roads to the greatest extent practicable.
- 5) Limits of excavation shall be set by stakes located every one hundred (100) feet with a minimum of [three (3)] feet exposed. A vertical control monument shall be installed in a readily accessible location and shown on all plans submitted by the permittee.
- 6) An earth removal or filling phasing plan shall be provided if the earth removal or filling operation exceeds a total of five (5) acres.